The defence Counsel submitted further that there was a triable issue here, as the sale and purchase of a land, that was subject to tax assessment, was not completed, and therefore no tax is payable.

She further stated that there is an apparent conflict between the provisions of s. 106(3) and s. 142(1) of the Income Tax Act. Section 142(1) of the Income Tax Act reads as follows:

> 142. (1) In a suit under s. 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the Court to give judgment for that amount.

It was the defence Counsel's contention that the phrase "suit under s. 106" in s. 142 implied that the Court had jurisdiction to hear matters pertaining to s. 106, including that of incorrectly assessed taxes. With respect this view is not tenable and is without merit.

Plaintiff's Counsel in her rebuttal, stressed that there was no conflict between s. 106 and s. 142 of the Income Tax Act. She referred to the Court the case of *Government of Malaysia v. Abdul Rahman* [1975] 1 MLJ 276 which in her view fortified her submission on this point.

In conclusion, I wish to state that I am in entire agreement with the authorities cited by the plaintiffs' Counsel namely *Government of Malaysia v. Abdul Rahman [*1975] 1 MLJ 276 and the Federal Court decision in *Sun Man Tobacco Co. Ltd. v. Government of Malaysia* wherein it was held that the Court was right in giving leave to the plaintiffs to sign final judgment. It is my view that if a tax payer wishes to dispute the amount of tax on the ground that it is excessive, or incorrectly assessed, under appeal, or incorrectly increased, the proper procedure for him is to file an appeal to the Special Commissioners of the Inland Revenue.

In the circumstances this appeal is dismissed and the leave to sign final judgment confirmed with costs.

LEE CHONG AH @ LEE CHONG AT

v.

CHEONG CHEE @ CHEONG CHEE HANG & 2 ORS.

HIGH COURT, IPOH
DATO' P.S. GILL J.
[CIVIL SUIT NO. 24-436-86]
6 MAY 1994

PRACTICE & PROCEDURE: Want of prosecution - Application to dismiss suit for not setting down case for trial within 60 days from date of order of Court - Delay of 6 $^1/_2$ years - Whether inordinate and inexcusable.

This was an application by the defendants to dismiss the plaintiff's suit for want of prosecution and that the counterclaim made by the defendants against the plaintiffs be allowed.

Held:

[1] On the evidence as stated in the affidavits before this Court, there has been no valid excuse for the delay of more than 6 $^1/_2$ years to enter the action for trial.

[2] The delay has an adverse effect on the defendant. The prejudice to the defendant is not merely confined to the possibilities of not having a fair trial, or in the form of failing memory of the witnesses, or lack of documents, and non-availability of witnesses, but also the agony of having the suit hanging over his head for the last 6 $^1/_2$ years.

[3] In the circumstances, the plaintiff has been guilty of inordinate and inexcusable delay. The defendants' application to dismiss this suit for want of prosecution was allowed.

[Defendants' application to dismiss plaintiff's suit for want of prosecution allowed].

Cases referred to:

Bliss v. Lambeth [1978] 1 WLR 382 ***(cit)***
Allen v. Sir Alfred McAlpine & Son Ltd. [1968] 1 All ER 546 ***(refd)***

For the plaintiff - S.Y. Lee; M/s. Mohd Noor & S.Y. Lee
For the defendant - Belinda Wan Yuet Ngor; M/s. Chan & Associates

JUDGMENT

P.S. Gill J:

This is an application by the defendants to dismiss the plaintiff's suit for want of prosecution, and

further that the counterclaim made by the defendants against the plaintiff be allowed.

The brief facts of the case are as follows.

The plaintiff filed a writ of summons against the defendants on 20 May 1986 to render an account of all monies paid and expended into the partnership of the plaintiff and defendants, with interest, and the return of the sum of RM10,000 given by the defendants to the plaintiff.

The defendants entered an appearance on 27 May 1986, and field a defence and counterclaim on 21 June 1986.

The plaintiff filed his reply and defence to the counterclaim on 5 July 1986.

As the plaintiff did not take any further action, the defendants on 21 November 1986 applied for summons for directions. This applications was heard on 10 July 1987, and the learned Judge ordered that the suit be set down for trial within 60 days from the said order. The plaintiff did not set the suit down for trial. In the meantime, on 14 January 1987, the plaintiff applied for interrogatories which the defendants duly complied with on 5 October 1987.

The defendants allege that the plaintiff had not taken any steps to set the suit down for trial over a period of 6 $^{1}/_{2}$ years, and this delay was inordinate and inexcusable. Because of this aforesaid delay, the defendants contend among other reasons that there is a possibility of death or disappearance of their witnesses, which would seriously prejudice the defendants' case.

Further to this, the first defendant charged his property to the United Malayan Banking Corporation, for the purpose of a loan which was to be utilised by the partnership between the plaintiff and the defendants.

The defendants also aver that monies owing to the partnership from Jabatan Pengarah Tanah dan Galian, have been withheld pending this suit. The plaintiff, in his affidavit in reply, stated that his solicitor at the material time was Messrs. C. Wilfred & Co. who, since the date of filing of the suit, had been suspended from practice. The plaintiff was unable to retrieve the said file from the office of Mr. Wildfred, and as such no further action was taken.

The plaintiff finally came to know that Mr. Wilfred was reinstated and practisting in Kuala Lumpur and Mr. Wilfred had agreed to continue with the prosecution of the suit. Unfortunately, Mr. Wilfred passed away in October 1992.

The plaintiff then engaged another firm of solicitors, Messrs. Margaret Yeo & Nasrim to take over the matter. There was no further development and the plantiff finally engaged the present solicitors to continue with the proceedings. His present solicitors had made numerous attempts to liase with Messrs. Margaret Yeo & Nasrim in respect of various documents, but there has been no response.

In his affidavit in reply to this, the defence Counsel contended that Mr. Wilfred had been suspended from practice in November 1988, and that, nothing had been done by the plaintiff in respect of this suit prior to this and even after that. According to them, Mr. Loh Poh Seng, another member of the Bar, was responsible for supervising the files of Mr. Wilfred in his absence.

Defendants' Counsel submitted that the delay by the plaintiff in proceeding with the civil suit shows a complete lack of interest on the part of the plaintiff, to have the matter set down for hearing.

On the evidence as stated in the affidavits before this Court, I was of the opinion, that there has been no valid excuse for the delay of more than 6 $^{1}/_{2}$ to enter the action for trial. There is no doubt, in my mind, that the plaintiff took no immediate steps to bring the case to a speedy trial. He had made no attempt to keep in contact with his various solicitors to find out the progress that they had made. The plaintiff and his solicitors have taken a dilatory attitude. The Court had also to consider whether such a delay has prejudiced the defendants. It undoubtedly has. First, the defendants were prevented from obtaining monies owing by the Jabatan Pengarah & Galian to the partnership pending the outcome of this suit. Secondly, the property of the defendants that was charged for the purposes of a loan for the partnership between the plaintiff and the defendants has been auctioned off as a result of the tardiness of the plaintiff in bringing the case to a speedy trial. Thirdly, in my view, the delay apart from being inordinate and inexcusable has also had an adverse effect on the defendant. The prejudice to him here is not merely confined to the possibilities of not having a fair trial, or in the form of failing memory of the

witnesses, or lack of documents, and non-availability of witnesses, but also the agony of having the suit hanging over his head for the last 6 $^{1}/_{2}$ years. See *Bliss v. Lambeth* [1978] 1 WLR 382. In arriving at my decision I did bear in mind the relevant principles as stated in the case of *Allen v. Sir Alfred McAlpine & Son Ltd.* [1968] 1 All ER 546.

I reiterate that the plaintiff kept the suit in abeyance for about 6 $^{1}/_{2}$ years, during which time it remained completely inactive. Further the plaintiff gave no satisfactory explanation at all for this inactivity. In the circumstances, the Court holds that the plaintiff has been guilty of inordinate and inexcusable delay, and as such, allows the defendants' applications, to dismiss this suit for want of prosecution.

LEE TENG KUI

v.

MENTERI DALAM NEGERI, MALAYSIA & 2 ORS.

HIGH COURT, JOHOR BAHRU
TUAN HAIDAR BIN MOHD NOOR J.
[CRIMINAL APPLICATION NO. 44-10 OF 1993]
10 JANUARY 1994

PREVENTIVE DETENTION: Affidavits - Affidavit of Deputy Home Minister prepared by Attorney General's Chambers but affirmed by officer of the Home Ministry - Whether valid - Commissioners for Oath Rules 1993 r. 12.

PREVENTIVE DETENTION: Failure by deponents to swear in formal part of affidavit - Whether defect curable - Whether Court should invoke O. 41 r. 4 RHC 1980 and allow use of affidavit.

PREVENTIVE DETENTION: Detainee's right to make representation - Rule 3(3) Dangerous Drugs (Special Preventive Measures)(Advisory Board Procedure) Rules 1987 - Whether complied with by detaining authority.

The applicant applied for a writ of *habeas corpus* on the grounds that the respondents, the detaining authorities herein, had filed defective affidavits in that the affidavit of the Deputy Home Minister, being affirmed by his own officer, was affirmed in contravention of r. 12 Commissioners for Oath Rules 1993, and that the deponents in some of the respondents' affidavits did not swear in the formal parts of the affidavits. And it was further contended that the applicant had not been informed of his right to make representations in contravention of Rule 3(3) Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987.

The primary question that arose was whether the defects in the affidavits, if any, amounted only to an irregularity and if so, whether the Court should invoke O. 41 r. 4 Rules of the High Court 1980 (RHC 1980) and allow the use of the said affidavits.

Held:

[1] Although in the opening paragraph of the affidavits the word "oath" or "affirm" has been omitted, the word "affirm" was used before the deponent put his signature thereon, thereby